

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO. HLP-2021-0001

ORDER SELECTING HEARING VENUE AND GRANTING PETITIONS TO INTERVENE

PROCEDURAL BACKGROUND

On January 28, 2022, Summit Carbon Solutions, LLC (Summit Carbon), filed a petition for a hazardous liquid pipeline permit with the Utilities Board (Board) to construct, operate, and maintain approximately 681 miles of 4- to 24-inch diameter pipeline for the transportation of liquefied carbon dioxide within the State of Iowa.

On June 17, 2022, the Board issued an order which, among other things, selected Webster County, Iowa, as the county at the midpoint of Summit Carbon's proposed hazardous liquid pipeline, unless a change in circumstance occurred which could require a change in the hearing location. In addition to selecting Webster County as the midpoint, the Board requested comments on the use of the Webster County Fairgrounds as a potential hearing venue. The Board sought comments because the Webster County Fairgrounds is not located in the corporate limits of Fort Dodge, Iowa, but approximately 4,000 feet outside of the corporate limits. Iowa Code § 479B.6(2) states "[i]f the pipeline exceeds five miles in length, the hearing shall be held in the county seat of the county located at the midpoint of the proposed pipeline." The Board

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sought comments as to whether the Webster County Fairgrounds substantially complies with the requirements of Iowa Code § 479B.6(2).

On June 21, 2022, Sierra Club filed comments in response to the Board's order.

On July 7, 2022, the Iowa Farm Bureau Federation (Farm Bureau) filed comments regarding the use of the Webster County Fairgrounds to conduct the hearing in this matter. Also on July 7, 2022, Summit Carbon filed its response to the June 17, 2022 order.

HEARING VENUE

The responses to the Board's June 17, 2022 order regarding use of the Webster County Fairgrounds to conduct the hearing in this matter are summarized below:

A. Sierra Club

Sierra Club states it believes the Webster County Fairgrounds would substantially comply with the requirements of Iowa Code § 479B.6(2). Sierra Club notes the fairgrounds is less than one mile from Fort Dodge's corporate limits, and while it is impossible to know exactly the legislative intent, it seems illogical that the legislature intended such a technical interpretation for Iowa Code § 479B.6(2).

B. Farm Bureau

Farm Bureau states Summit Carbon's proposed hazardous liquid pipeline is an atypical project for Iowa and presents unique challenges, and a large venue with adequate parking and availability will be necessary to ensure everyone who wants to participate in the evidentiary hearing is able to do so. Farm Bureau states the length of time needed for the hearing is another complication to the matter as the length of the

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hearing will likely depend on the number of parcels subject to Exhibit H and how many landowners wish to address the Board. Therefore, the venue will need to have flexibility for the duration of the hearing if the hearing runs longer than anticipated.

Farm Bureau states Fort Dodge has venue locations within its corporate limits that could meet the needs for the hearing, though the larger question is whether these venues are available for the duration of the hearing. Farm Bureau states strict compliance with the statute would be ideal; however, if the Board determines the Webster County Fairgrounds substantially complies with Iowa Code § 479B.6(2), the Board should make specific findings as to why venues within the corporate limits of Fort Dodge are inadequate for the hearing venue.

C. Summit Carbon

Summit Carbon states it believes holding the hearing at the Webster County Fairgrounds would be unduly risky and, while Iowa generally requires only substantial and not strict compliance with Iowa statutes, that is usually in relation to notices. Summit Carbon does not believe substantial compliance has been applied to this type of requirement. Summit Carbon indicates the Board should examine venues within the corporate limits of Fort Dodge and, if no locations are acceptable, Summit Carbon agrees with Farm Bureau that the Board should make a clear record that a venue within the corporate limits is not feasible.

D. Board Discussion

The Board has reviewed the filings and has determined the Webster County Fairgrounds substantially complies with the requirements of Iowa Code § 479B.6(2) and will use the Fairgrounds as the venue for the hearing. The Board has examined school

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gymnasiums and auditoriums, community college facilities, government buildings, and community event spaces, and none of them within the corporate limits of Fort Dodge will work as the venue for the Summit Carbon hearing. The Board examined the possibility of using both school and collegiate venues within the corporate limits of Fort Dodge; however, given the uncertainty as to when and how long the hearing will last, the Board excluded these venues due to the potential for disruption of classes and school activities. For these reasons, the Board determined school and collegiate venues within the corporate limits of Fort Dodge would not be appropriate for the hearing.

The Board then examined government buildings as potential venues. The issue the Board uncovered with these venues came down to the size of the facility. The Board does not yet know how many parties, witnesses, or attendees will be at the hearing, but the government facilities examined would not be able to accommodate the expected size for the hearing. For that reason, the Board has determined government buildings within the corporate limits of Fort Dodge would not be appropriate hearing venues.

Lastly, the Board examined several community event facilities as potential venues and determined that they would be either too small, disruptive, or unavailable for the length of time the Board anticipates needing the venue. Because the possible community event facilities will not adequately serve the Board or the parties' needs during the hearing, the Board determined they would not be appropriate hearing venues.

Because the Board has been unable to locate appropriate hearing venues within the corporate limits of Fort Dodge, the Board has determined the Webster County

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Fairgrounds would be the most appropriate venue to hold Summit Carbon's hearing. While the Fairgrounds is not within the corporate limits of Fort Dodge, the Board has determined the Webster County Fairgrounds substantially complies with Iowa Code § 479B.6(2).

The Iowa Supreme Court in *Brown v. John Deere Waterloo Tractor Works*, stated:

"[S]ubstantial compliance" with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

423 N.W.2d 193, 194 (Iowa 1988) (citing *Smith v. State*, 364 So.2d 1, 9 (Ala. Crim. App. 1978)).

Using the Court's rationale cited above, the Board finds it reasonable under Iowa Code § 479B.6(2) to hold the hearing in the general vicinity of the county seat. The Board has determined the location of the Webster County Fairgrounds will comply with this reasonable objective. The Fairgrounds is approximately 4,000 feet outside the corporate limits of Fort Dodge. Both of these facts support substantial compliance with the requirements of Iowa Code § 479B.6(2).

Both Farm Bureau and Summit Carbon point out that substantial compliance has not been used in this kind of case, but rather in notice cases. See *Brown*, 423 N.W.2d at 194. However, that is not the case. *Dix v. Casey's General Stores, Inc.*, 961 N.W.2d

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671, 682 (Iowa 2021) (stating substantial compliances have been used for statutory requirements in guilty plea colloquy, school district reorganization, and preliminary breath test machine calibration cases). The issue of a venue being within proximity of a county seat but not within the corporate limits of the county seat is a similar case, and the Board finds that the Webster County Fairgrounds is the only reasonable alternative for conducting the hearing to consider the Summit Carbon hazardous liquid pipeline.

PETITIONS TO INTERVENE

On June 20, 2022, Food and Water Watch, by and through its attorney Channing L. Dutton, filed a petition for intervention. Food and Water Watch states it has approximately 23,256 members and supporters across Iowa, and is part of a larger, national organization with more than one million members and supporters. Food and Water Watch states its mission is to protect Iowa's environment, water resources, and farming communities, as well as prevent the impacts of climate change, and that its interest will be adversely impacted, should a permit be issued to Summit Carbon. Food and Water Watch is unaware of any other entity that can represent Food and Water Watch's interest, nor is it aware of any other means by which to protect its interest. Food and Water Watch believes its intervention will assist in the development of a sound record by presenting testimony and participating in the Board's evidentiary hearing.

On July 1, 2022, Great Plains Laborers District Council (GPLDC) by and through Tony Penn, Business Manager, filed a petition for intervention. GPLDC states it is a labor organization representing 9,000 members, including thousands of construction

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workers in Iowa. GPLDC is composed of several local affiliates, including Laborers Local 177 and Laborers Local 43 in Iowa. GPLDC states it has a direct interest in this proceeding because pipeline construction is a core industry for it, and its members have experience and training necessary to construct the proposed hazardous liquid pipeline. GPLDC points out major pipeline projects have the potential to generate millions of work hours for union members and that Summit Carbon has stated it will utilize local union contractors to build its proposed project. GPLDC states its participation in the proceeding can reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument, there are no other parties who can represent its interest, and it is unaware of other means by which to protect its interest.

The Board's subrule at 199 Iowa Administrative Code (IAC) 7.13(3) provides that "[a]ny person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board...." In determining whether to grant intervention, the Board shall consider factors including, but not limited to, the prospective intervenor's interest in the subject matter of the proceeding, the effect a final decision in the proceeding may have upon the prospective intervenor's interest, and the extent to which the prospective intervenor may be expected to assist in the development of a sound record. *Id.*

Food and Water Watch and GPLDC have stated that they have a substantial interest in the outcome of this proceeding and will assist in the development of a more complete record. Therefore, applying the 199 IAC 7.13(3) factors, the Board finds Food

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and Water Watch and GPLDC have stated sufficient grounds for granting their petitions to intervene.

Additionally, pursuant to 199 IAC 7.4(8)(a), a party to a proceeding before the Board may appear and be heard through an attorney licensed by the state of Iowa. The Board's rule regarding representation further provides:

A corporation or association may appear and present evidence by an officer or employee. However, only licensed attorneys shall represent a party before the board or a presiding officer in any matter involving the exercise of legal skill or knowledge, except with the consent of the board or presiding officer. All persons appearing in proceedings before the board or a presiding officer shall conform to the standard of ethical conduct required of attorneys before the courts of Iowa.

199 IAC 7.4(8)(b).

While the motions to intervene filed by Food and Water Watch establish that it is represented by counsel, GPLDC's motion to intervene was submitted by its business manager and also contained a request to add May Va Lor to the service list. Neither of these individuals listed in GPLDC's petition for intervention is licensed to practice law in the State of Iowa. In compliance with paragraph 199 IAC 7.4(8)(b) quoted above, GPLDC may present evidence at the hearing; however, GPLDC will be required to request permission from the Board to cross-examine witnesses or take any other action during the hearing.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The hearing venue for Summit Carbon Solutions, LLC's petition for

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hazardous liquid pipeline permit hearing shall be the Webster County Fairgrounds, located in Webster County, Iowa.

2. The petition to intervene filed by Food and Water Watch on June 20, 2022, is granted.

3. The petition to intervene filed by Great Plains Laborers District Council on July 1, 2022, is granted.

UTILITIES BOARD

Geri Huser Date: 2022.08.10
16:40:13 -10'00'

Richard Lozier Date: 2022.08.05
19:34:23 -05'00'

ATTEST:

Kerrilyn Russ Digitally signed by Kerrilyn Russ
Date: 2022.08.11 08:57:41
-05'00'

Joshua J Byrnes Date: 2022.08.05
12:38:11 -05'00'

Dated at Des Moines, Iowa, this 11th day of August, 2022.